

CM OF NORTH DAKOTA, INC.**CONTRACT NO. V437C-358****VABCA-3986****VA MEDICAL AND REGIONAL****OFFICE CENTER****FARGO, NORTH DAKOTA**

Noah A. Riley, Vice President, CM of North Dakota, Inc., Fargo, North Dakota, for the Appellant.

Branson H. Moore, Esq., District Counsel, Fargo, North Dakota; and *Phillipa L. Anderson, Esq.*, Acting Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE ANDERS

On September 21, 1993 the Department of Veterans Affairs (VA or Government) awarded a fixed-price construction contract in the amount of \$84,850 to CM of North Dakota (CM or Appellant) to construct a basement corridor at the VA Medical and Regional Office Center, Fargo, North Dakota. This appeal is from a final decision of the Contracting Officer (CO) denying a claim in the amount of \$3,527 for alleged differing site conditions.

The record consists of the Rule 4 Appeal File submitted by the CO, the pleadings, a transcript of the one-day hearing held in Fargo, N.D., which the Appellant elected not to attend, having opted to submit its case on the record pursuant to Board Rule 11, and posthearing briefs from each party.

FINDINGS OF FACT

The Contract was awarded to CM on September 21, 1993. (R4, tab 5) The Notice to Proceed was received by CM on October 21, 1993. It provided that the work was to be completed within 120 calendar days. (R4, tab 6)

There were several requests from CM for change orders, among which was the following, submitted to the CO on January 7, 1994:

With regards to the above referenced project, it has been brought to my attention that existing conditions are different from the drawings. A change order is needed in order to be compensated for the changed conditions as follows:

* * * *

[4] Cutting the concrete block and fitting it around the piping at the corridor walls that are concrete block.

Labor 35 hrs @ 13.59

476.00

Labor 35 hrs @ 6.08	213.00
ND labor burden @ 32%	220.00

[5] Extra materials needed to frame the metal stud walls for the corridor walls in the mechanical room. The drawing does not show that there are any pipes to cut around or to install the sheetrock around. The labor was extensive because of the room to work.

Materials	150.00
Labor 44 hrs @ 13.50/hr	594.00
Labor 44 hrs @ 12.00/hr	528.00
Labor 44 hrs @ 17.00/hr	748.00
ND labor burden 32%	598.00

(R4, tab 15)

On February 2, 1994 the CO informed CM that its request for a change order was denied because "Extensive pipe modification is required on drawing 1-H2," and "Details 1/1H2, 2/1-H2 and 4/1-H2 show large numbers of pipes located in the new corridor." The CO called CM's attention to Specification section 1010-1.8B which required bidders to examine the site of work and "decide for themselves character of materials and make their bids accordingly." Also referenced by the CO was Clause 52.236-3, Site Investigation and Conditions Affecting the Work. (R4, tab 20)

On March 3, 1994 the CO issued a final decision denying CM's claim, reiterating the reasons stated in his February 2, 1994 letter to Appellant, *supra*. (R4, tab 22) CM's appeal was received and docketed on March 3, 1994. (R4, tabs 23-24)

At the hearing held in Fargo ND on September 13, 1994, the Government presented testimony by Harold A. Thompsen, an architect with Geston Duffy Company, who prepared the plans for the Contract; Edward J. Stalheim, the VA Contracting Officer; and Dale P. DeKrey, VA's Project Engineer and the CO's Technical Representative.